UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

AUG 15 2011

Jeff A. McNelly
Executive Director
ARIPPA
2015 Chesnut Street
Camp Hill, Pennsylvania 17011

Dear Mr. McNelly:

I appreciated the opportunity to meet with you and others from ARIPPA on June 17, 2011 to discuss your concerns related to EPA's final rule entitled, *Identification of Non-Hazardous Secondary Materials (NHSM) That Are Solid Wastes*. 76 FR 15456 (March 21, 2011). During that meeting, you expressed concern that coal refuse from legacy piles may not meet the legitimacy criterion for contaminants when compared to virgin coal. Similar issues were discussed in phone conversations with representatives of USWAG (Utility Solid Waste Activities Group).

As you are aware, we determined in the NHSM final rule that currently generated coal refuse is an alternative traditional fuel (see 40 CFR 241.2). On the other hand, coal refuse from legacy piles has clearly been discarded and is a solid waste unless sufficiently processed into a new legitimate fuel product. As discussed in the preamble, we have determined that coal refuse reclaimed from legacy piles is processed no differently than the manner in which raw material coal (or currently generated coal refuse) is processed into fuels today and therefore meets our definition of "processing" as codified in §241.2.[1] The question then becomes whether coal refuse from legacy piles (after processing) would meet the legitimacy criteria for fuels to be considered a non-waste fuel.

It is clear that coal refuse from legacy piles, once processed, satisfies the first two criteria codified at §241.3(d)(1)(i) and (ii), as these materials are managed in the same manner and would have similar heating values to currently generated coal refuse (a traditional fuel). It is the third criterion (§241.3(d)(1)(iii))--that the material contains contaminants at levels comparable to or lower than traditional fuels, that appears to be the basis for your concern. That is, if virgin coal is selected as the traditional fuel to which contaminant levels in coal refuse are compared,

[1] For a discussion of processing coal refuse, see 76 FR 15508-9.

there is a possibility that the contaminants present in coal refuse reclaimed from legacy piles will be greater than those found in virgin coal.[2]

As discussed in the preamble to the final rule, the comparison of contaminant levels may be made to any traditional fuel(s) that can be or is burned in the particular unit (see 76 FR 15542). Because currently generated coal refuse is a traditional fuel, the final rule allows currently generated coal refuse to be used as the traditional fuel benchmark when comparing contaminant levels with coal refuse found in legacy piles. This is a logical conclusion since any units combusting coal refuse from legacy piles also would be designed to burn currently generated coal refuse. In fact, the NHSM preamble notes that since legacy coal refuse is processed in the same manner as currently-generated coal refuse in order to meet the same fuel specifications, legacy coal refuse would contain any potential contaminants "at levels that are comparable to or lower than coal refuse that is currently generated." (76 FR15510). Thus, we believe coal refuse from legacy piles that is processed and managed in the same manner as currently generated coal refuse satisfies the contaminant legitimacy criterion.

Thank you for your continued interest in protecting the environment. If you have any other questions, please contact James Berlow, Director of ORCR's Program Implementation and Information Division, at berlow.jim@epa.gov or (703) 308-8398.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

cc: Aaron Wallisch, USWAG

[2] As stated in the preamble, we note that at least one commenter provided data demonstrating that some coal refuse taken from legacy piles satisfies the contaminant legitimacy criterion when directly compared to contaminant levels in virgin coal. See 76 FR 15510.